

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

UNITED STATES OF AMERICA)
)
vs.) CASE NO. 3:08-CR-107-PLR-MCLC
)
RALPH O'NEAL)

MEMORANDUM AND ORDER

On February 3, 2015, the Honorable Clifton L. Corker, United States Magistrate Judge, filed a 4-page Report and Recommendation [Doc. 592], in which he recommended that O'Neal's motions for return of property [Docs. 574 and 581] be denied.

This matter is before the Court for consideration of O'Neal's objections [Doc. 593] to the Report and Recommendation. As required by 28 U.S.C. § 36(b)(1) and Rule 72(b), Fed.R.Civ.P., the Court has now undertaken a *de novo* review of those portions of the Report and Recommendation to which O'Neal objects. For the reasons that follow, the Court finds O'Neal's objections without merit and the objections will be overruled.

O'Neal was convicted of eleven counts of drug trafficking on December 17, 2009. On April 17, 2015, O'Neal moved for the return of \$3,071 of U.S. currency and a Virgin mobile cell phone seized on June 29, 2008 [Doc. 574]. On May 7, 2015, O'Neal moved for the return of \$20,000 in U.S. currency seized on June 8, 2006 [Doc. 581].

A. Return of U.S. Currency in the Amount of \$3,071

The record shows that \$3,071 was seized from O’Neal at his arrest on June 29, 2008. However, the currency was not included in the federal indictment in the instant case. Rather, the currency was seized and forfeited to the Roane County Sheriff’s Office. Pursuant to Tennessee state procedure, the currency was forfeited on February 10, 2009, to the Roane County Sheriff’s Office. The currency was not forfeited to the United States; therefore, any complaints regarding the forfeiture of the currency must be made to the State of Tennessee. This Court is without authority to return the currency to O’Neal.

B. Return of Cell Phone

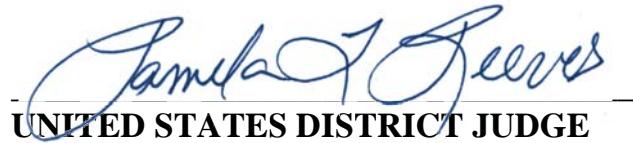
Two cell phones were seized by the United States during a search of defendant’s residence, 304 Roddy Lane, Harriman, Tennessee, on June 30, 2008, pursuant to a search warrant. The record reflects these two cell phones were destroyed by the FBI on October 7, 2013. Accordingly, O’Neal’s motion for return of the cell phones is moot.

C. Return of U.S. Currency in the Amount of \$20,000

The record reflects that on June 8, 2006, \$20,000 in U.S. Currency was seized from O’Neal at the Bush Intercontinental Airport in Houston, Texas, by the DEA. The DEA in the Southern District of Texas began administrative forfeiture of the currency, and O’Neal was sent notice of the forfeiture by certified mail on July 28, 2006, and according to DEA records, received the notice on August 10, 2006. O’Neal failed to timely file a claim for the currency, which was forfeited to DEA on October 5, 2006. Accordingly, the Court finds that by failing to file a timely claim for the currency, O’Neal has forfeited any right to its return.

After a careful review of the record, the Court is in complete agreement with the Magistrate Judge's recommendation that O'Neal's motions for return of property be denied. O'Neal's objections to the Report and Recommendation are without merit, and are **OVERRULED**. Accordingly, the court **ACCEPTS IN WHOLE** the Report and Recommendation under 28 U.S.C. § 636(b)(1) and Fed.R.Civ.P. 72(b). It is **ORDERED**, for the reasons stated in the Report and Recommendation, which the court adopts and incorporates into its ruling, that O'Neal's motions for return of property [Docs. 574, 581] are **DENIED**.

Enter:



UNITED STATES DISTRICT JUDGE